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IN THE
COURT OF APPEALS OF INDIANA

JASON W. HOEPPNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0710-CR-573
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0401-FA-6

May 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jason W. Hoeppner pled guilty to two counts of Class A felony child molesting, and the trial court sentenced him to consecutive forty-five year terms. After the trial court denied Hoeppner's subsequent motion to correct error, he appealed. This Court ultimately remanded for resentencing after concluding that several aggravating factors identified by the trial court violated *Blakely v. Washington*, 542 U.S. 296 (2004). On remand, the trial court sentenced Hoeppner to concurrent forty-five year terms. He now appeals his sentence, arguing that it is inappropriate in light of the nature of the offenses and his character. Because we addressed this issue during Hoeppner's earlier appeal, it is *res judicata*. We therefore affirm.

Facts and Procedural History

We provided the following facts and procedural history in an earlier unpublished memorandum decision:

> During November and December of 2003, twenty-three year old Hoeppner lived in a house with eight-year-old B.S. and her family. While residing with B.S.'s family, Hoeppner, on at least two occasions, placed his penis in the anus of B.S. with the intent to arouse or satisfy his sexual desires.
>
> On January 20, 2004, the State filed an information charging Hoeppner with Count I, child molesting, a Class A felony, I.C. § 35-42-4-3. On January 27, 2004, the State filed an additional information charging Hoeppner with ten counts of child molesting as Class A felonies, and two counts of child molesting as Class C felonies, I.C. § 35-42-4-3. On the same day, the trial court granted the State's motion to amend the information in Count I.
>
> On April 6, 2004, in accordance with a plea agreement, Hoeppner plead guilty to two counts of child molesting as Class A felonies in exchange for the dismissal of the remaining counts. On the same day, a plea hearing was held. After the plea hearing, the trial court took Hoeppner's plea agreement under advisement. On July 29, 2004, the trial court accepted Hoeppner's plea

> agreement and found him guilty on both counts. On the same day, a sentencing hearing was held. Following the sentencing hearing, the trial court sentenced Hoeppner to forty-five years on each count, and ordered the sentences to be served consecutively, for an aggregate sentence of ninety years. Thereafter, on August 30, 2004, Hoeppner filed a motion to correct error, arguing that his sentences are illegal under *Blakely v. Washington*. The trial court denied Hoeppner's motion on October 6, 2004.

Hoeppner v. State, 71A03-0503-CR-92, slip op. at 2-3 (Ind. Ct. App. June 27, 2005) (*Hoeppner I*).

Hoeppner thereafter appealed the denial of his motion to correct error, and we affirmed. In our memorandum decision, we found Hoeppner's *Blakely* argument waived but addressed the question of whether his aggregate ninety-year sentence was inappropriate in light of Indiana Appellate Rule 7(B). We concluded that Hoeppner's character rendered the sentence inappropriate and remanded with instructions to the trial court to revise Hoeppner's sentence to concurrent forty-five year terms, resulting in an aggregate sentence of forty-five years. *Id.* at 10-11.

Hoeppner then filed a petition for rehearing, requesting that we reconsider our conclusion that he could not raise a *Blakely* claim. In light of *Kincaid v. State*, 837 N.E.2d 1008 (Ind. 2005), we granted his rehearing petition and addressed his *Blakely* arguments on their merits. *Hoeppner v. State*, 71A03-0503-CR-92 (Ind. Ct. App. Mar. 22, 2006) (*Hoeppner II*). We concluded that two aggravating circumstances identified by the trial court were invalid under *Blakely* and that we could not say with confidence that the trial court would have imposed the same sentence absent these two aggravators, despite four remaining valid aggravators. *Id.* at 3, 5. We therefore remanded the matter to the trial court for

resentencing.[1] During the resentencing hearing, the trial court explained its previous findings of aggravating circumstances and determined that the four aggravators approved by this Court in the rehearing decision supported concurrent forty-five year sentences. Appellant's App. p. 19. Hoeppner now appeals.

Discussion and Decision

Hoeppner's sole argument on appeal is that his aggregate forty-five year sentence is inappropriate. Even where a trial court has not abused its discretion in imposing a sentence, the Indiana Constitution authorizes us to conduct independent appellate review and sentence revision, pursuant to the paradigm set forth by Indiana Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Indiana Appellate Rule 7(B) provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden rests with the defendant to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The State counters that Hoeppner's inappropriateness claim is barred by the doctrine of *res judicata* because we have already addressed this issue and determined that forty-five years is not an inappropriate sentence for Hoeppner. We agree with the State. The doctrine of *res judicata* bars repetitious litigation of the same issues on appeal. *Reed v. State*, 856

[1] The State mistakenly contends in its appellate brief that we remanded this case for resentencing "solely to impose concurrent sentences." Appellee's Br. p. 4, 5. This was our instruction to the trial court in our *June 27, 2005*, decision. However, our decision on rehearing determined that two out of the six aggravating circumstances were invalid, and we remanded for resentencing based upon that conclusion *without* instructions to the trial court regarding what sentence should be imposed.

N.E.2d 1189, 1194 (Ind. 2006). Where a particular issue has been raised on appeal and decided adversely, it is *res judicata* and may not be raised again by the defendant. *Rouster v. State*, 705 N.E.2d 999, 1003 (Ind. 1999).

In this case, another panel of this Court has already evaluated Hoeppner's claim that his sentence is inappropriate. Granted, when we addressed this argument, Hoeppner's sentence was consecutive forty-five year terms, or ninety years. However, we determined that in light of the nature of the offense and the character of the offender, *see* Ind. Appellate Rule 7(B), an appropriate sentence would be concurrent forty-five year terms. *Hoeppner I*, 71A03-0503-CR-92 at *10-11. Although we later determined that two aggravators recognized by the trial court were invalid pursuant to *Blakely*, this does not alter anything *in regard to the nature of Hoeppner's offenses and his character*. App. R. 7(B). The nature of the offenses and Hoeppner's character remain the same, and we have already concluded that concurrent forty-five year terms are not inappropriate in light of these considerations. Thus, this issue is *res judicata* and Hoeppner cannot re-litigate it. Nonetheless, from our review of the record, we conclude that Hoeppner's aggregate forty-five year sentence is not inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.